IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.127 of 1998.

Reserved on: 30.05.2007

Date of Decision:June 1, 2007

Chamera HE Project ,NHPC. …..Appellant

Vs.

Nidhia & Ors. … Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] Yes

For the appellant:	***Mr. Rajnish Maniktala, Advocate vice Mr. K.D. Shreedhar, Advocate .***
For the respondents :	***Mr.Anand Sharma, Advocate for respondents No.1 to 6 & 7(i) to 7(iv).***
	Mr.M.L.Chauhan, Addl. Advocate General, for respondents No.8 & 9.

Kuldip Singh, Judge.

This appeal has been directed against the award dated 17.10.1997 passed by learned District Judge, Chamba Division, Chamba, in LAC No.8 of 1993 enhancing compensation, allowing 30% solatium on the enhanced amount, additional compensation under Section 23 (1-A) at the rate of 12% per annum from 16.5.1992 to 23.4.1993, 9% per annum interest from 23.4.1993 to 23.4.1994 and thereafter at the rate of 15% per annum till the amount of compensation is paid or deposited.

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[1] Whether reporters of Local Papers are allowed to see the Judgment? Yes

2. The facts, in brief, are that State of Himachal Pradesh for construction of Chamera Dam reservoir acquired land in *Mohal Barangal.* The notification under Section 4 of the Act was published on 16.5.1992 and the Land Acquisition Collector, after conclusion of the acquisition proceedings, announced the award on 23.4.1993. The Collector awarded Rs.91,870/- compensation for acquiring 7 Bighas 9 Biswas land and Rs.46,770/- compensation for the structures built on the land. The Land Acquisition Collector has awarded compensation at different rates in respect of different kinds of land. Land owners filed reference petition under Section 18 of the Act for enhancement of the compensation. As per the land owners, the Collector has given less compensation for the acquired land and structures. They claimed enhancement of compensation both for the land and structures.

3. The respondent / State and Collector contested the claim of the land owners on the ground that the market value of the acquired land and structures has been determined correctly and the land owners are not entitled to any enhancement of compensation. The Chamera Hydro Electric Project also opposed the claim of the land owners by taking the plea that the Collector has already awarded compensation to the land owners on higher side and, therefore, the land owners are not entitled to any enhancement of compensation. A plea of limitation was also taken.

4. The learned District Judge framed the following issues:-

> *(i) Whether the market value of the acquired property has not been correctly assessed. If so, what is the just amount of compensation payable to the petitioners? OPP*

(ii) Whether the petitioners did not raise any objection in proceedings under Section 9 of the Land Acquisition Act. If so, its effect? OPR

(iii) Whether the petitioners have received the amount of compensation without any objection. If so, its effect? OPR

(iv) Whether the petition is bad due to misjoinder of the respondent – State? OPR

(v) Whether the petition is time barred? OPR

(vi) Relief.

The learned District Judge while deciding Issue No.1 has enhanced the market value of land and structures by 50%. Issues No.2 and 3 were decided against the respondents. In Issue No.4 it has been held that State should not have been impleaded as party but decision on this issue does not affect the claim of the land owners. The Issue No.5 was conceded by respondents and, therefore, it has been held that the petition is within limitation. The learned District Judge vide the impugned award ultimately enhanced the compensation of land Rs.45,935/-, for structures Rs.23,385/- total Rs.69,320/- and on enhanced compensation other statutory amounts and interest have been allowed, as noticed above. The appellant is in appeal against the enhanced compensation as awarded by the learned District Judge in the impugned award.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the appellant has submitted that the learned District Judge has misread the evidence. The 50% increase in market value of the land and structures has been wrongly allowed. The enhancement has been made on surmises and conjectures. The enhancement is not based on legal evidence. The land owners completely failed to prove their case. The awards Ext. PX, Ext.PA and Ext.PB and sale deed Ext.P-1 on record on one hand were not relied by learned District Judge but at the same time the market value of the acquired land and structures has been enhanced on the ground that the market value of the acquired property is much more than what has been assessed by the Collector. In brief it has been submitted that the learned District Judge has erred in law for enhancing compensation. The learned counsel for the land owners has supported the impugned award. The learned Additional Advocate General submitted that the compensation awarded by the Collector does not require any enhancement.

7. PW-1 Uttam Chand has deposed that their land measuring 7 Bighas 10 Biswas and 8 Biswansis was situated in Mohal Barangal. On this land their house, blacksmith workshop etc. were there. The land was *Barani Awal* and was having 104 trees, two crops used to be grown on the land. They used to cultivate wheat, maize, pulses and vegetables on the said land. They were dependant upon the said land. Mohal Palehi and Mohal Chaklu are opposite to the said land. Their land was similar to the land in Mohal Palehi.

They have been given compensation at the rate of Rs.11,000/- per Bigha whereas in Palehi compensation has been awarded at the rate of Rs.20,000/- per Bigha and in Mohal Chaklu Rs.28,000/- per Bigha. The facilities of school, hospital, Tehsil, Treasury etc. are available in Barangal. He has denied that the acquired land was *Banjar.*

8. PW-2 Chaman Singh has stated that he is resident of village Palehi. The acquired land was *Barani Awal.* PW-3 Milap Chand, Horticulture Supervisor has proved list Ext.PW-3/A of non fruit trees and lists Ext.PW-3/B and Ext.PW-3/C of fruit trees standing on the acquired land. The payment of fruit trees has been made as per 1967 rates. PW-4 Suresh Joshi, Assistant Engineer, Chamera Project, has proved the plans of structures on acquired land Ext.PW-4/A, Ext.PW-4/B, Ext.PW-4/C and Ext.PW-4/D. The estimates Ext.PW-4/E, Ext.PW-4/F, Ext.PW-4/G and Ext.PW-4/H were prepared as per 1987 schedule rates. PW-5 Sushil Kumar, Dealing Clerk, from the office of Executive Engineer, H.P.PWD, Chamba has proved Ext.PW-5/A, Ext.PW-5/B showing the acceptance of tenders of Jagdish Chand and B.S.Bijalwan Contractors. PW-6 Parshotam Ram has stated that he remained President of Gram Panchayat, Barangal and he is also Numberdar of that village. He has seen the acquired land which was *Barani Awal*. At Barangal there are office of SDO (PWD), Bank, School and Primary Health Centre and opening of Treasury office has also been approved. Mohal Palehi is opposite to the acquired land. These Mohals have similar weather conditions and crops. The land owners have tendered in evidence copies of awards Ext.PA, Ext.PB and copy of sale deed Ext.PC and *Naksha Bartan*

Ext.PD and closed their evidence on 27.6.1995. Many opportunities were given to the other side for leading evidence but ultimately on 4.4.1996 evidence of the opposite side was closed. In other words, the State etc. did not lead any oral and documentary evidence in the reference petition.

9. The learned counsel for the appellant has submitted that learned District Judge has returned the findings that the evidence led by the land owners for assessing the market value of the acquired property cannot be relied but still he has enhanced the market value of the acquired property by giving 50% increase both for land and structures. This 50% increase of the market value of the acquired property is not based upon any legal acceptable principle.

10. The increase of market value allowed by learned District Judge of the acquired property can be supported from material already on record on additional grounds also. Mohal Palehi is opposite to Mohal Barangal where the acquired property is situated. Mohal Chaklu is also adjacent to Mohal Barangal. It has come on record that acquired land was *Barani Awal.* The lands in three Mohals, namely, Palehi, Chaklu and Barangal have similar potentialities. There is specific evidence that in Mohal Barangal facilities of school, Primary Health Centre, Bank, Office of SDO (PWD), Treasury Office etc. were available at the time of acquisition. The notification under Section 4 of the Act for acquiring the property in question was issued on 16.5.1992. Sale deed Ext.PC was executed on 4.2.1988 for selling 2 Biswas land for Rs.9000/-. This sale deed has been considered in award Ext.PX. The land sold under this sale

deed was *Barani Awal* and as per Ext.PX this was bonafide sale. As per sale deed Ext.PC, the market value of land was Rs.4500/- per Biswa or Rs.90,000/- per Bigha in Mohal Palehi.

11. The State and other respondents have placed nothing on record that in fact at the time of acquisition of property in village Barangal any land or other property was sold. The sale deed Ext.PC was executed much prior to acquisition of land in Mohal Palehi vide notification dated 20.4.1992 under Section 4 of the Act. Therefore, it can be safely held that sale deed Ext.PC was not executed to enhance the market value in Mohal Palehi or in Mohal Barangal. The sale deed Ext.PC is, thus, genuine transaction.

12. In ***ONGC Ltd. versus Sendhabhai Vastram Patel & Ors., (2005) 6 SCC 454,*** the Hon'ble Supreme Court in Paras-11 and 15 has held as follows:-

> "While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefor has to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the court may take recourse to other methods viz. judgments and awards passed in respect of acquisition of lands made in the same village and / or neighbouring

> villages. Such a judgment and award in the absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value."

In Para-15, it has further been observed as follows:-

> "Instances of sale in respect of the similar land situated in the same village and / or neighbouring villages should have been taken as guiding factors by the Reference Judge as also by the High Court. In the absence of any better evidence, the Reference Judge as also the High Court could have made addition in the sale prices for the land as evidenced by the said deeds of sale."

13. The learned District Judge has not relied sale deed Ext.PC on the ground that vendor and vendee of this sale deed were not examined. In ***Cement Corporation of India versus Puria & Others, (2004) 8 SCC 270,*** it has been held that it is not absolutely necessary to examine vendor and vendee of the sale deed once certified copy of the sale deed has been placed on record. Therefore, non examination of vendor and vendee of sale deed Ext.PC is no ground to reject this sale deed.

14. It has come on record that acquired land was *Barani Awal* and land covered by sale deed Ext.PC is none else but sale deed dated 4.2.1988 referred in Ext.PX which is of *Barani Awal* land. The acquired land and land covered by sale deed Ext.PC are adjoining lands and have same potentialities. In view of the ***ONGC's case (supra),*** the sale deed

Ext.PC of adjacent Mohal having similar potentialities as of acquired land can be relied upon for assessing the market value of the acquired land. No doubt, sale deed Ext.PC is of small area in comparison to acquired land. There is no absolute bar to rely small area transaction for assessing the market value of large area.

15. In ***Ravinder Narain & Anr. Versus Union of India [2003 (4) SCC 481],*** the Hon'ble Supreme Court in Para-7 has held as follows:

> "It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices."

16. In ***Basavva (SMT) & Ors. Versus Spl. Land Acquisition Officer & Ors. [(1996) 9 SCC 640,*** the Hon'ble Supreme Court has held as follows:-

> "… … In ***Vasundara Devi*** case 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously, the High Court kept in view the fact that the lands under Ex. P-10 were situated at far-flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12%, i.e.

> 53+12%=65% in determination of the compensation. On the basis of the rationale referred to above, the principle adopted by the High Court cannot be said to be illegal."

17. In view of the above discussion, for assessing the market value of the acquired land sale deed Ext.PC can be safely relied. The sale deed Ext.PC is of small area, therefore, for assessing market value of large area on the basis of sale deed Ext.PC some deduction is to be made from market value of sale deed Ext.PC. In my opinion, for assessing market value of acquired land 65% deduction is to be made from the value of land mentioned in sale deed Ext.PC and value so assessed will be the market value of acquired land. As per Ext.PC, the market value of the land is Rs.4500/- per Biswa. After making 65% deduction from the market value of land mentioned in Ext.PC, the value comes to Rs.1575/- per Biswa (Rs.4500-Rs.2925). Therefore, the market value of the acquired land can be safely assessed at Rs.1575 x 20=Rs.31,500/- per Bigha, which is the market value of *Barani Awal* land. Once the market value of *Barani Awal* land has been assessed by adopting above principle then market value of other land such as *Gair Mumkin Beed* can also be assessed by adopting the same principle. The Collector has assessed the market value of *Barani Awal* land at Rs.12,900/- and the District Judge after allowing 50% increase has assessed the market value of the *Barani Awal* land Rs.19,350/- per Bigha. The market value of *Barani Awal* acquired land assessed by the District Judge is much below the market value of the said land as assessed above. The land owners

have accepted the award. They have not filed any cross objections. Therefore, no fault can be found with market value assessed by the District Judge of the acquired land.

18. The learned District Judge has increased the market value of the structures by 50% over the market value assessed by the Collector. The market value of the structures were assessed on the basis of 1987 schedule of rates and no premium has given on 1987 schedule rates even though the property was acquired under notification dated 16.5.1992. It is common knowledge that there is general trend of increase in cost of construction. The State has acquired land and structures under different notifications for construction of reservoir of Chamera Dam. In RFA No.72 of 1998, along with RFAs No.75, 56 and 63 of 1998 decided on 30.5.2007, this Court has approved 50% increase in market value of the structures over and above the 1987 schedule of rates. The land and property in RFA No.72 of 1998, along with RFAs No.75, 56 and 63 of 1998, were also acquired for construction of reservoir of Chamera Project under notification dated 6.6.1992. Therefore, in the present case also, 50% increase given by the District Judge for assessing the market value of the structures over and above the 1987 schedule of rates is not arbitrary. The appellant has failed to make out any case for interference.

19. In view of the above discussion, the appeal is dismissed with no order as to costs.

1st June, 2007*(soni)* ***(Kuldip Singh), J.***